RECENT DECISIONS

ADJOINING LANDOWNERS—LATERAL SUPPORT—STRUCTURES.—The defendant dug a trench near the boundary line of the plaintiff's land, upon which the plaintiff had previously built a wire fence. As a result of the excavation the plaintiff's soil fell and several fence posts resting thereon were undermined. The plaintiff brought suit to recover for damage to the soil. *Held,* the defendant is liable. *Rutkoski* v. *Zalaski* (Conn.), 96 Atl. 365.

Where land remains in its natural state, the owner has a right, *jure naturæ,* to lateral support for it from the adjoining land. *Northern Transp. Co.* v. *Chicago,* 99 U. S. 635; *Gilmore* v. *Driscoll,* 122 Mass. 199, 23 Am. Rep. 312. But such a right does not exist if the lateral pressure of the soil be increased by superstructures placed upon it. *Thurston* v. *Hancock,* 12 Mass. 220, 7 Am. Dec. 57; *Moody* v. *McClelland,* 39 Ala. 45, 84 Am. Dec. 770. In England, it seems to be well settled, that the right to the lateral support of buildings can be acquired by prescription. *Dalton* v. *Angus,* L. R., 6 App. Cas. 740, 10 E. R. C. 98. See *Lemaitre* v. *Davis,* L. R., 19 Ch. D. 281. But in the United States, though there are some dicta sustaining the English doctrine, it is now generally admitted that the right of lateral support cannot be acquired by prescription. *Tunstall* v. *Christian,* 80 Va. 1, 56 Am. Rep. 581; *Mitchell* v. *Rome,* 49 Ga. 19, 15 Am. Rep. 669.

If the adjoining landowner is negligent in making excavations, he is liable for damages to the buildings, or other structure on the land, as well as to the land itself. *Louisville, etc., R. R. Co.* v. *Bonhayo,* 94 Ky. 67, 21 S. W. 526; *Gildersleeve* v. *Hammond,* 109 Mich. 431, 67 N. W. 519, 33 L. R. A. 46. The excavating party, however, is only required to use ordinary care, according to the circumstances. *Larson* v. *Metropolitan St. R. Co.,* 110 Mo. 234, 19 S. W. 416, 33 Am. St. Rep. 439, and note, 16 L. R. A. 330. It has been held, that a failure on the part of the excavating party to give reasonable notice was in itself a violation of the duty of ordinary care, unless the other party has knowledge thereof. *Schultz* v. *Byers,* 53 N. J. L. 442, 22 Atl. 514, 13 L. R. A. 569, 26 Am. St. Rep. 435. See *Flanagan Mfg. Co.* v. *Levine,* 142 Mo. App. 242, 125 S. W. 1172. While this view is, no doubt, true as to adjoining landowners in populous cities; yet the rule requiring notice of the intended excavation to be given in all such cases was established by *dicta. Trower* v. *Chadwick,* 3 Bing (N. C.) 334, 3 Scott. 699. See *Dorrity* v. *Rapp,* 72 N. Y. 307, 310; *Schultz* v. *Byers,* 53 N. J. L. 442, 22 Atl. 514, 516, 13 L. R. A. 569, 572, 26 Am. St. Rep. 435, 539, and note. The better view would seem to be that it is a question of fact, under all the circumstances, whether the failure to give notice constitutes negligence in any given case. *Jamison* v. *Myrtle Lodge,* 158 Iowa 264, 139 N. W. 547; *Spohn* v. *Dives,* 174 Pa. St. 474, 34 Atl. 192.

One line of cases hold that if the soil would have fallen regardless of the added burdens resting thereon, the excavating party is liable for the damage to the artificial structure, as well as the soil. *Brown* v.

Robins, 4 Hurl. & N. 186; *Wilms* v. *Jess*, 94 Ill. 464, 34 Am. Rep. 242; *Fornandis* v. *Great Northern R. Co.*, 41 Wash. 486, 84 Pac. 18, 111 Am. St. Rep. 1027, 5 L. R. A. (N. S.) 1086. See *Stearns* v. *Richmond*, 88 Va. 992, 29 Am. St. Rep. 758, and note. Other cases, upon the theory that an adjoining landowner erects at his peril, hold that in the absence of negligence the excavating party is liable only for the damage to the soil. *Gilmore* v. *Driscoll*, *supra*; *Gildersleeve* v. *Hammond*, *supra*.

Ordinarily, the question whether superstructure caused the soil to fall, in any given case, is for the jury; but it has been held that an ordinary fence is not such additional weight as will deprive the landowner of his right to recover for injury to the soil. *Oneil* v. *Harkins*, 8 Bush (Ky.) 650. If this be so, then, according to the first line of cases above, it would seem that the plaintiff, in the principal case, could recover for the damage to his fence as well as to the soil. But, according to the opposite view, he can recover only for the injury to his soil. *Gilmore* v. *Driscoll*, *supra*.

ADVERSE POSSESSION—TACKING OF HOLDINGS—PRIVITY.—Through a mistake as to his boundary, the plaintiff's grantor fenced in and used land belonging to the defendant company. The land in dispute was not included in the deed to the plaintiff; but the fence was pointed out to him as being the true boundary to the land, and the fenced area was occupied by him as his own for a period, which if added to the period during which it was occupied by his grantor, would amount to the time required by the statute of limitations. *Held*, the plaintiff is entitled to the land. *Helmick* v. *Davenport, R. I. & N. W. Ry. Co.* (Ia.), 156 N. W. 736.

In England and a few of the American States, no privity is required between successive adverse possessors in order for them to tack their holdings to complete the period required by the statute of limitations. *Shannon* v. *Kinney*, 1 A. K. Marsh. (Ky.) 3, 10 Am. Dec. 705; *Fanning* v. *Wilcox*, 3 Day (Conn.) 258. See 3 HARV. L. REV. 324. Other courts arrive at practically the same result by presuming a grant from the state, where land has been occupied for a prescribed period without a hiatus in the possession. *Davis* v. *McArthur*, 78 N. C. 357; *Scales* v. *Cockrill*, 3 Head (Tenn.) 432. And see *Cowles* v. *Hall*, 90 N. C. 330. The almost universal rule in this country, however, is that the adverse possessors must be in privity to tack their holdings. *Allis* v. *Field*, 89 Wis. 327, 62 N. W. 85; *Low* v. *Schaffer*, 24 Or. 239, 33 Pac. 678.

Privity, in this connection, means privity of possession—that the later occupant has obtained the possession of the former. *Illinois Steel Co.* v. *Budzisz*, 106 Wis. 499, 81 N. W. 1027, 48 L. R. A. 702. Hence, tacking is allowed between ancestor and heir. *Williams* v. *McAliley*, Cheves (S. C.) 200. See *Sawyer* v. *Kendall*, 10 Cush. (Mass.) 241. And it is generally agreed that tacking is permissible between grantor and grantee, although there are a few cases to the contrary. *Frost* v. *Courtis*, 172 Mass. 401, 52 N. E. 515. But see *Garrett* v. *Weinberg*, 48 S. C. 28, 26 S. E. 3. By the great weight of authority, where the land claimed is actually occupied, a transfer by a defective deed, by parol, or any voluntary transfer creates sufficient privity between the parties